

# CRS Report for Congress

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## **Arctic National Wildlife Refuge (ANWR): Legislative Actions Through the 109<sup>th</sup> Congress, First Session**

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# Arctic National Wildlife Refuge (ANWR): Legislative Actions Through the 109<sup>th</sup> Congress, First Session

## Summary

A major element of the energy debate is whether to approve energy development in the Arctic National Wildlife Refuge (ANWR) in northeastern Alaska, and if so, under what conditions, or whether to continue to prohibit development to protect the area's biological resources. ANWR is rich in fauna, flora, and commercial oil potential. Its development has been debated for over 40 years, but increases in gasoline and natural gas prices, terrorist attacks, and infrastructure damage from hurricanes have intensified the debate. Current law forbids energy leasing in ANWR.

This report is intended to provide a summary of legislative attempts to address issues of energy development and preservation in the Refuge from the 95<sup>th</sup> Congress through the 109<sup>th</sup> Congress, first session, with emphasis on the 107<sup>th</sup> through 109<sup>th</sup> Congresses. This history has been cited by many, in and out of Congress, as background for issues being raised in the 109<sup>th</sup> Congress. The report contains little analysis of the substance of this issue, which is covered in other CRS reports. See CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109<sup>th</sup> Congress*, for information on continuing actions in the 109<sup>th</sup> Congress relative to ANWR. This report will not be updated.

In the 108<sup>th</sup> Congress, the Senate passed an amendment to strip language from the Senate budget resolution that would have facilitated subsequent passage of ANWR legislation. The House passed H.R. 6, an omnibus energy bill, which would have opened ANWR to development. It included an amendment to limit certain features of federal leasing development to 2,000 acres, without restricting the total number of acres that could be leased. The Senate passed its version of H.R. 6 by adopting the provisions of its omnibus energy bill from the 107<sup>th</sup> Congress, which would not have opened the Refuge to development. The conference committee did not include ANWR development language in the conference report. The conference report was agreed to by the House; the Senate considered the measure, but a cloture vote failed. The legislation lapsed at the end of the 108<sup>th</sup> Congress.

In the 109<sup>th</sup> Congress, first session, the FY2006 budget resolution (H.Con.Res. 95) required the House Resources and Senate Energy Committees to achieve savings targets that would be difficult without including ANWR development legislation. The Senate Budget Committee reported a title in S. 1932 (reconciliation) to open ANWR; supporters designed it to meet both the savings target and Senate procedural restrictions on matters included in reconciliation bills. ANWR provisions were struck from the House reconciliation bill (H.R. 4241) before floor consideration. The House then substituted its text for the Senate version of S. 1932. ANWR was a major issue in conference. The conference report (H.Rept. 109-362) omitted ANWR development. The House and Senate passed different versions of the report, neither containing ANWR provisions. In the end, P.L. 109-171 (signed February 8, 2006) did not contain ANWR provisions. Development advocates then added ANWR development to the conference report for the Defense appropriations bill (H.R. 2863). While the House passed the report with the ANWR provision, the ANWR title was removed after failure of a cloture motion in the Senate; it was not in the final bill.

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# Arctic National Wildlife Refuge (ANWR): Legislative Actions Through the 109th Congress, First Session

## Background and Analysis

The Arctic National Wildlife Refuge (ANWR) consists of 19 million acres in northeast Alaska. It is administered by the Fish and Wildlife Service (FWS) in the Department of the Interior (DOI). Its 1.5 million acre coastal plain on the North Slope of the Brooks Range is currently viewed as one of the most likely undeveloped U.S. onshore oil and gas prospects. According to the U.S. Geological Survey, there is even a small chance that taken together, the fields on this federal land could hold as much economically recoverable oil as the giant field at Prudhoe Bay, found in 1967 on the coastal plain west of ANWR. That state-owned portion of the coastal plain is now estimated to have held 11-13 billion barrels of oil.

The Refuge, and especially the coastal plain, is home to a wide variety of plants and animals. The presence of caribou, polar bears, grizzly bears, wolves, migratory birds, and many other species in a nearly undisturbed state has led some to call the area “America’s Serengeti.” The Refuge and two neighboring parks in Canada have been proposed for an international park, and several species found in the area (including polar bears, caribou, migratory birds, and whales) are protected by international treaties or agreements. The analysis below covers, first, the economic and geological factors that have triggered new interest in development, followed by the philosophical, biological, and environmental quality factors that have triggered opposition to it. That analysis is followed by a history of congressional actions on this issue, with a focus on those in the 107<sup>th</sup> Congress through the 109<sup>th</sup> Congress, first session. See **Tables 1** and **2** for votes in the House and Senate from the 96<sup>th</sup> Congress through the 109<sup>th</sup> Congress, first session.

The conflict between high oil potential and nearly pristine nature creates a dilemma: should Congress open the area for oil and gas development, or should the area’s ecosystem be given permanent protection from development? What factors should determine whether to open the area? If the area is opened, how can damages be avoided, minimized, or mitigated? To what extent should Congress legislate special management of the area (if it is developed), and to what extent should federal agencies be allowed to manage the area under existing law? If Congress takes no action, the Refuge remains closed to energy development.

**Table 1. Votes in the House of Representatives on  
Energy Development within the Arctic National Wildlife Refuge**

| <b>Congress</b>   | <b>Date</b> | <b>Voice/<br/>Roll Call</b> | <b>Brief Description</b>  |
|-------------------|-------------|-----------------------------|---|
| 95 <sup>th</sup>  |             |                             | no floor votes  |
| 96 <sup>th</sup>  | 5/16/79     | #152                        | Udall-Anderson substitute for H.R. 39 adopted by House (268-157); included provisions designating all of ANWR as wilderness.  |
|                   | 5/16/79     | #153                        | H.R. 39 passed House (360-65).  |
|                   | 11/12/80    | voice<br>(unan-<br>imous)   | Senate version (leaving 1002 area development issue to a future Congress) of H.R. 39 passed House.  |
| 97 <sup>th</sup>  |             |                             | no floor votes  |
| 98 <sup>th</sup>  |             |                             | no floor votes  |
| 99 <sup>th</sup>  |             |                             | no floor votes  |
| 100 <sup>th</sup> |             |                             | no floor votes  |
| 101 <sup>st</sup> |             |                             | no floor votes  |
| 102 <sup>nd</sup> |             |                             | no floor votes  |
| 103 <sup>rd</sup> |             |                             | no floor votes  |
| 104 <sup>th</sup> | 11/17/95    | #812                        | House agreed (237-189) to conference report on H.R. 2491 (H.Rept. 104-350), FY1996 budget reconciliation (a large bill that included 1002 area development provisions; see text). |
| 105 <sup>th</sup> |             |                             | no floor votes  |
| 106 <sup>th</sup> |             |                             | no floor votes  |
| 107 <sup>th</sup> | 8/1/01      | #316                        | House passed Sununu amendment to H.R. 4 to limit specified surface development of 1002 area to a total of 2,000 acres (228-201).  |
|                   | 8/1/01      | #317                        | House rejected Markey-Johnson (CT) amendment to H.R. 4 to strike 1002 area development title (206-223).   |
|                   | 8/2/01      | #320                        | H.R. 4, an omnibus energy bill, passed House (240-189). Title V of Division F contained 1002 area development provisions.   |
| 108 <sup>th</sup> | 4/10/03     | #134                        | House passed Wilson (NM) amendment to H.R. 6 to limit certain features of 1002 area development to a total of 2,000 acres (226-202).  |
|                   | 4/10/03     | #135                        | House rejected Markey-Johnson (CT) amendment to H.R. 6 to strike 1002 area development title (197-228).   |
|                   | 4/11/03     | #145                        | House passed H.R. 6, a comprehensive energy bill (247-175); Division C, Title IV would have opened the 1002 area to energy development.   |

| <b>Congress</b> | <b>Date</b> | <b>Voice/<br/>Roll Call</b> | <b>Brief Description</b>  |
|-----------------|-------------|-----------------------------|---|
| 109th           | 3/17/05     | #88                         | House adopted (218-214) the concurrent budget resolution, H.Con.Res. 95, which included spending targets that would be difficult to achieve unless ANWR development legislation was passed. |
|                 | 4/20/05     | #122                        | House rejected (200-231) Markey amendment to strike the ANWR provision in its omnibus energy bill (H.R. 6) allowing leases for exploration, development, and production in ANWR.            |
|                 | 4/28/05     | #149                        | House adopted (214-211) the conference report on the concurrent budget resolution, H.Con.Res. 95.   |
|                 | 12/18/05    | #669                        | House adopted (308-106) the conference report on the Defense appropriations bill (H.R. 2863), which would have allowed oil and gas leasing in ANWR.   |
|                 | 12/22/05    | voice                       | House passed S.Con.Res. 74, which corrected the enrollment of H.R. 2863, removing the ANWR development provision.   |

**Table 2. Votes in the Senate on Energy Development within the Arctic National Wildlife Refuge**

| <b>Congress</b>   | <b>Date</b> | <b>Voice/<br/>Roll Call</b> | <b>Brief Description</b>  |
|-------------------|-------------|-----------------------------|---|
| 95 <sup>th</sup>  |             |                             | no floor votes  |
| 96 <sup>th</sup>  | 7/22-23/80  | #304                        | Motion to table Tsongas amendment (including a title to designate all of ANWR as wilderness) to H.R. 39 defeated (33-64).   |
|                   | 8/18/80     | #354                        | Senate adopted cloture motion on H.R. 39 (63-25).   |
|                   | 8/19/80     | #359                        | Senate passed Tsongas-Roth-Jackson-Hatfield substitute to H.R. 39 (78-14); this bill is current law, and leaves decision about any 1002 area development for a future Congress. |
| 97 <sup>th</sup>  |             |                             | no floor votes  |
| 98 <sup>th</sup>  |             |                             | no floor votes  |
| 99 <sup>th</sup>  |             |                             | no floor votes  |
| 100 <sup>th</sup> |             |                             | no floor votes  |
| 101 <sup>st</sup> |             |                             | no floor votes  |
| 102 <sup>nd</sup> | 11/1/91     | #242                        | Cloture motion on S. 1220 failed; one title would have opened 1002 area to development (50-44).   |
| 103 <sup>rd</sup> |             |                             | no floor votes  |
| 104 <sup>th</sup> | 5/24/95     | #190                        | Senate voted to table Roth amendment to strip 1002 area revenue assumptions from S.Con.Res. 13 (56-44).   |

| <b>Congress</b>   | <b>Date</b> | <b>Voice/<br/>Roll Call</b> | <b>Brief Description</b>   |
|-------------------|-------------|-----------------------------|--|
|                   | 10/27/95    | #525                        | Senate voted to table Baucus amendment to strip 1002 area development provisions in H.R. 2491 (51-48).   |
| 105 <sup>th</sup> |             |                             | no floor votes   |
| 106 <sup>th</sup> | 4/6/00      | #58                         | Senate voted to table Roth amendment to strip 1002 area revenue assumptions from the FY2001 budget resolution (S.Con.Res. 101) (51-49).  |
| 107 <sup>th</sup> | 12/3/01     | #344                        | Lott-Murkowski-Brownback amendment to Daschle amendment to H.R. 10 included 1002 area development title in H.R. 4, as passed by the House. A cloture motion on the amendment failed (1-94).  |
|                   | 4/18/02     | #71                         | Senate failed to invoke cloture on Murkowski amendment to S. 517, an omnibus energy bill. ANWR language of the amendment was similar to that in the House-passed version of H.R. 4 (46-54).  |
| 108 <sup>th</sup> | 3/19/03     | #59                         | Senate passed Boxer amendment to delete certain revenue assumptions from S.Con.Res. 23, the FY2004 budget resolution; floor debate indicated that amendment was clearly seen as a vote on developing 1002 area (52-48).                |
| 109 <sup>th</sup> | 3/16/05     | #52                         | Senate voted to reject Cantwell amendment to strike revenue assumptions from its FY2006 budget resolution (S.Con.Res. 18) that would have given procedural protection to legislation authorizing oil drilling in part of ANWR (49-51). |
|                   | 11/3/05     | #288                        | Senate voted to reject Cantwell amendment to its FY2006 budget reconciliation bill (S. 1932) that would have deleted the provision establishing an oil and gas leasing program in ANWR (48-51).  |
|                   | 12/21/05    | #364                        | Senate failed to invoke cloture on the conference report on the FY2006 Defense appropriations bill (H.R. 2863), which included provisions to open ANWR to development (56-44).   |
|                   | 12/21/05    | #365                        | Senate adopted a concurrent resolution (S.Con.Res. 74) that instructed the Clerk of the House to strike provisions from the conference report to H.R. 2863 that would have allowed oil drilling in ANWR (48-45).                       |

Basic information on the Refuge can be found in CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*,<sup>1</sup> and at the FWS website, [<http://www.r7.fws.gov/nwr/arctic>],<sup>2</sup> which includes links to other organizations interested in the area. An extensive presentation of development arguments can be

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<sup>1</sup> Full citations of past CRS publications are at the end of this report. For brevity, these publications will be referred to only by number and title in the text's first reference, and only by number in any subsequent references.

<sup>2</sup> This website and the others listed in this paragraph were visited on February 8, 2006.

found at [<http://www.anwr.org>], sponsored by Arctic Power, a nonprofit coalition. Opponents' arguments can be found variously at [<http://www.alaskawild.org>], [<http://www.protectthearctic.com/>], or [<http://www.tws.org/arctic/>]. Maps of the coastal plain showing existing oil development areas on state land can be found at [<http://www.dog.dnr.state.ak.us/oil/products/maps/maps.htm>].)

## Legislative History of the Refuge, 1957-2000

**The Early Years.** The energy and biological resources of northern Alaska have raised controversy for decades, from legislation in the 1970s, to a 1989 oil spill, to more recent efforts to use ANWR resources to address energy needs or to help balance the federal budget. In November 1957, DOI announced plans to withdraw lands in northeastern Alaska to create an “Arctic National Wildlife *Range*.” The first group actually to propose to Congress that the area become a national wildlife range, in recognition of the many game species found in the area, was the Banana Valley (Alaska) Sportsmen’s Association in 1959. On December 6, 1960, after statehood, the Secretary of the Interior issued Public Land Order 2214 reserving the 9.5 million-acre area as the Arctic National Wildlife Range.

**The 1970s.** In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA, P.L. 92-203, 85 Stat. 688) to resolve all Native aboriginal land claims against the United States. ANCSA provided for monetary payments and also created Village Corporations that received the surface estate to approximately 22 million acres of lands in Alaska. Village selection rights included the right to choose the surface estate (surface rights, as opposed to rights to exploit any energy or minerals beneath the surface) in a certain amount of lands within the National Wildlife Refuge System. Under §22(g) of ANCSA, the chosen lands were to remain subject to the laws and regulations governing use and development of the particular refuge. Kaktovik Inupiat Corporation (KIC, the local Native corporation created under ANCSA, and headquartered within ANWR) received rights to three townships along the coast of ANWR. ANCSA also created Regional Corporations, which could select subsurface rights to some lands and full title to others. Subsurface rights in national wildlife refuges were not available, but in-lieu selections to substitute for such lands were provided.

**The 1980s.** In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA, P.L. 96-487, 94 Stat. 2371), which included several sections about ANWR. The Arctic Range was renamed the Arctic National Wildlife Refuge, and was expanded, mostly southward and westward, to include an additional 9.2 million acres.<sup>3</sup> Section 702(3) of ANILCA designated much of the original range as a wilderness area, but did not include the coastal plain. (For more on wilderness designation, see CRS Report RL31447, *Wilderness: Overview and Statistics*.) ANILCA defined the *Coastal Plain* as the lands on a specified map — language that was interpreted as excluding most Native lands, even though these lands are

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<sup>3</sup> Additional land was added in later years, bringing the current total to 19.3 million acres. Portions of the Refuge added in 1980 and later were not included in the wilderness system.



*geographically* part of the coastal plain.<sup>4</sup> Section 1002 of ANILCA directed that a study of the Coastal Plain (which therefore is often referred to as the *1002 area*) and its resources be completed within five years and nine months of enactment. The resulting 1987 report was called the *1002 report* or the Final Legislative Environmental Impact Statement (FLEIS).

Section 1003 of ANILCA prohibited oil and gas development in the entire Refuge, or “leasing or other development leading to production of oil and gas from the range” unless authorized by an act of Congress. (For more history of legislation on ANWR and related developments, see CRS Report RL31278 and CRS Report RL31115, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*.)

**From 1990 to 2000.** In recent years, there have been various attempts to authorize opening ANWR to energy development. In the 104<sup>th</sup> Congress, the FY1996 budget reconciliation bill (H.R. 2491, §§5312-5344) would have opened the 1002 area to energy development, but the measure was vetoed, as many observers had expected. President Clinton cited the ANWR sections as one of his reasons for the veto. (For key provisions of that legislation, see archived CRS Issue Brief IB95071, *The Arctic National Wildlife Refuge*, available from the authors.)

While bills were introduced, the 105<sup>th</sup> Congress did not debate the ANWR issue. In the 106<sup>th</sup> Congress, bills to designate the 1002 area of the Refuge as wilderness and others to open the Refuge to energy development were introduced. Revenue assumptions about ANWR were included in the FY2001 budget resolution (S.Con.Res. 101) reported by the Senate Budget Committee on March 31, 2000. An amendment to remove this language was tabled. However, conferees rejected the language. The conference report on H.Con.Res. 290 did not contain this assumption, and the report was passed by both chambers on April 13. S. 2557 was introduced May 16, 2000; it included a title to open the Refuge to development. Hearings were held on the bill, but a motion to proceed to consideration of the bill on the Senate floor did not pass.

Only three recorded votes relating directly to ANWR development occurred from the 101<sup>st</sup> through the 106<sup>th</sup> Congress. All were in the Senate:

- In the 104<sup>th</sup> Congress, on May 24 1995, a motion to table an amendment that would have stripped ANWR development titles from the Senate version of H.R. 2491 passed (Roll Call #190). (See above.)
- In the same Congress, on October 27, 1995, another motion to table a similar amendment to H.R. 2491 also passed (Roll Call #525).

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<sup>4</sup> This report will use “Coastal Plain” to refer to the land legally designated under ANILCA and under subsequent Executive Branch rulings. In lower case (“coastal plain”), the term will be used in the geographic sense, i.e., the north of the foothills of the Brooks Range. It stretches from the Canadian border west to Bering Strait. Its width varies from about 10 miles (at the Canadian border) to over 100 miles south of Barrow.

- In the 106<sup>th</sup> Congress, the vote to table an amendment to strip ANWR revenue assumptions from the budget resolution (S.Con.Res. 101; see above) was passed (April 6, 2000, Roll Call #58).

## **Legislative History of the Refuge, 2001-2002**

H.R. 4, an omnibus energy bill containing ANWR development provisions, passed the House on August 2, 2001 (yeas 240, nays 189; Roll Call #320). Title V of Division F was the text of H.R. 2436 (H.Rept. 107-160, Part I). The measure would have opened ANWR to exploration and development. The previous day, an amendment by then Representative Sununu to limit specified surface development to a total of 2,000 acres was passed (yeas 228, nays 201; Roll Call #316). Representatives Markey and Johnson (CT) offered an amendment to strike the title; this was defeated (yeas 206, nays 223; Roll Call #317). The House appointed conferees on June 12, 2002. (See below for action after Senate passage of H.R. 4.)

In the first session, Senator Lott (on behalf of himself and Senators Murkowski and Brownback) offered an amendment (S.Amdt. 2171) to an amendment on pension reform (S.Amdt. 2170) to H.R. 10, a bill also on pension reform. Their amendment included, among other energy provisions, the ANWR development title in H.R. 4, as passed by the House. Their amendment also included provisions prohibiting cloning of human tissue. A cloture motion was filed on the Lott amendment, and the Senate failed to invoke cloture (yeas 1, nays 94; Roll Call #344) on December 3, 2001. Instead, the Senate voted the same day in favor of invoking cloture on the underlying amendment (S.Amdt. 2170), (yeas 81, nays 15; Roll Call #345). Because cloture was invoked on the underlying amendment, Senate rules required that subsequent and pending amendments to it be germane. The Senate's presiding officer subsequently sustained a point of order against the Lott amendment, which was still pending, on the grounds that it was not germane to the underlying amendment on pension reform, and thus the amendment fell.

The next vehicle for Senate floor consideration was S. 517, which concerned energy technology development. On February 15, 2002, Senator Daschle offered an amendment (S.Amdt. 2917), an omnibus energy bill. It did not contain provisions to develop the Refuge, but two amendments (S.Amdt. 3132 and S.Amdt. 3133) to do so were offered by Senators Murkowski and Stevens, respectively, on April 16. The language of the two amendments was, in most sections, identical to that of H.R. 4 (Division F, Title V). Key differences included a requirement for a presidential determination before development could proceed, an exception to the oil export prohibition for Israel, and a number of changes in allocation of any development revenues, as well as allowing some of those revenues to be spent without further appropriation. On April 18, the Senate essentially voted to prevent drilling for oil and gas in the Refuge. The defeat came on a vote of 46 yeas to 54 nays (Roll Call #71) on a cloture motion to block a threatened filibuster on Senator Murkowski's amendment to S. 517, which would have ended debate and moved the chamber to a direct vote on the ANWR issue.

Lacking a provision to develop ANWR, the text of S. 517, as amended, was substituted for the text of the House-passed H.R. 4, and passed the Senate (yeas 88, nays 11; Roll Call #94) on April 25, 2002. Conferees attempted to iron out the

substantial differences between the two versions in the time remaining in the second session. The conference committee chairman, Representative Tauzin, indicated that the ANWR issue, as one of the most controversial parts of the bill, would be considered toward the end of the conference, after less controversial provisions. Press reports at the time indicated that conferees were likely to drop provisions to develop the Refuge. Interior Secretary Norton stated that she would recommend veto of a bill lacking ANWR development provisions.<sup>5</sup> In the end, no conference agreement was reached, and H.R. 4 died at the end of the 107<sup>th</sup> Congress.

Finally, H.R. 770 and S. 411 would have designated the 1002 area as wilderness, but no action was taken on either bill.

## Legislative History of the Refuge, 2003-2004

Work began on FY2003 Interior appropriations in the 107<sup>th</sup> Congress but was not completed until the 108<sup>th</sup> Congress. In the 107<sup>th</sup> Congress, for the FY2003 Interior appropriations bill, the House Committee on Appropriations had agreed to report language on the Bureau of Land Management (BLM) energy and minerals program in general, and stated that no funds were included in the FY2003 funding bill “for activity related to potential energy development within [ANWR]” (H.Rept. 107-564, H.R. 5093). But §1003 of ANILCA prohibited “development leading to production of oil and gas” unless authorized by Congress. Thus, the committee’s report language was viewed by some as barring the use of funds for pre-leasing studies and other preliminary work related to oil and gas drilling in ANWR. The report of the Senate Committee on Appropriations did not contain this prohibition. A series of continuing resolutions provided funding for DOI into the 108<sup>th</sup> Congress.

Conferees on the FY2003 Consolidated Appropriations Resolution (P.L. 108-7) included language in the joint explanatory statement stating that they “do not concur with the House proposal concerning funding for the [BLM] energy and minerals program.” This change from the House report language was interpreted by some as potentially making available funds for preliminary work for development in ANWR. However, as noted, the prohibition contained in ANILCA remains in effect, so the ability to use money in the bill for particular pre-leasing activities was not clear.

**FY2004 Reconciliation.** During the 108<sup>th</sup> Congress, development proponents sought to move ANWR legislation through the FY2004 budget reconciliation process to avoid a possible Senate filibuster later in the session. (Reconciliation bills in the Senate are considered under special rules that do not permit filibusters. See CRS Report 98-814, *Budget Reconciliation Legislation: Development and Consideration* and CRS Report RL30862, *Budget Reconciliation Procedures: The Senate’s ‘Byrd Rule.’*) The House agreed to the FY2004 budget resolution (H.Con.Res. 95) on March 21 (yeas 215, nays 212; Roll Call #82). The resolution contained reconciliation instructions to the House Resources Committee for reductions, but did not specify the expected source of the savings. If the House language had been adopted, ANWR development language might have been considered as part of a

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<sup>5</sup> Tom Doggett “Interview — Norton wants energy bill veto if no ANWR drilling,” Reuters News Service (September 19, 2002).

reconciliation measure to achieve the savings. S.Con.Res. 23, as reported by the Senate Budget Committee, stated:

The Senate Committee on Energy and Natural Resources shall report a reconciliation bill not later than May 1, 2003, that consists of changes in laws within its jurisdiction sufficient to decrease the total level of outlays by \$2,150,000,000 for the period of fiscal years 2004 through 2013.

To meet this directive, the committee would very likely have reported legislation to open ANWR to development. On March 19, 2003, Senator Boxer offered S.Amdt. 272 to delete this provision. Floor debate indicated that the Boxer amendment was clearly seen as a vote on developing ANWR. The amendment passed (yeas 52, nays 48; Roll Call #59.) The amended Senate version of the resolution was ultimately accepted by both House and Senate. As a result, while the Committee on Energy and Natural Resources could still report legislation to authorize opening the Refuge, such legislation would not have been eligible for inclusion in a reconciliation bill. Without the procedural protections associated with reconciliation, a filibuster could have been used to prevent a vote on an authorization bill. (See CRS Report RS20368, *Overview of the Congressional Budget Process*.) In the end, the conferees on the budget resolution included no instructions to the House Resources and Senate Energy and Natural Resources Committees.

**Comprehensive Energy Legislation.** The House passed H.R. 6, a comprehensive energy bill, on April 11, 2003. Division C, Title IV would have opened the 1002 area to energy development. On April 10, the House had passed the Wilson (NM) amendment to H.R. 6 to limit certain features of development to a total of 2,000 acres (yeas 226, nays 202; Roll Call #134), without restricting the total number of acres that could be leased. As in the 107<sup>th</sup> Congress, Representatives Markey and Johnson (CT) offered an amendment to strike the title; this was defeated (yeas 197, nays 228; Roll Call #135). H.R. 4514 was identical to the ANWR title of the House version of H.R. 6 except in one provision on revenue disposition. (See “Major Legislative Issues,” below.) In addition, one bill (H.R. 39) was introduced to open the 1002 area to development, and two bills (H.R. 770 and S. 543) were introduced to designate the 1002 area as wilderness.

The initial version of the Senate energy bill (S. 14) had no provision to open the Refuge, and Chairman Domenici stated that he did not plan to include one. After many weeks of debate in the Senate, as prospects of passage seemed to be dimming, Senators agreed to drop the bill they had been debating and to go back to the bill passed in the Democratic-controlled 107<sup>th</sup> Congress. On July 31, 2003, they substituted the language of that bill for that of the House-passed H.R. 6. There was widespread agreement that the unusual procedure was a means of getting the bill to conference. Members, including Chairman Domenici, indicated at the time their expectation that the bill that emerged from conference would likely be markedly different from the bill that had just been passed by the Senate. One of the key differences between the two bills was the presence of ANWR development language in the House version, and its absence in the Senate version. (See CRS Issue Brief IB10116, *Energy Policy: The Continuing Debate and Omnibus Energy Legislation*.) Conference Chairman Domenici included the House title on ANWR in his working draft, but in the end, the conference committee deleted ANWR development features

in the conference report (H.Rept. 108-375); the conference report was agreed to by the House on November 18, 2003 (yeas 246, nays 180; Roll Call #630); the Senate considered the measure, but a cloture vote failed (57 yeas, 40 nays; Roll Call # 456) on November 21, 2003.

The Senate focused in the second session on a reduced energy bill (S. 2095) that might then go to a second conference with the House; like its version of H.R. 6, this new bill did not contain ANWR development provisions. In any event, no scenario for energy legislation that was discussed publicly included provisions that would have opened the Refuge to development. However, the President's proposed FY2005 budget assumed legislation would be passed that would open the Refuge and would therefore produce revenues. This proposal would have assisted efforts to assume ANWR revenues in a budget resolution, and therefore aided its inclusion in a reconciliation package, as was attempted in the first session. The features of the bills mentioned above and the issues that most commonly arose in legislative debate are described below.

## **Legislative History of the Refuge, 2005**

As explained below, the ANWR debate has taken two basic legislative routes in the 109<sup>th</sup> Congress: (a) the reconciliation bill (S. 1932 and H.R. 4241), which is not subject to Senate filibusters; and (b) other bills (H.R. 6 and H.R. 2863, an energy bill and Defense appropriations, respectively) which are subject to filibusters. The budget resolution and reconciliation have been a focus of attention, particularly in the Senate.<sup>6</sup> (See also "Omnibus Energy Legislation," below.) The FY2006 Senate budget resolution (S.Con.Res. 18) passed by the Senate Budget Committee included instructions to the Senate Committee on Energy and Natural Resources to "report changes in laws within its jurisdiction sufficient to reduce outlays by \$33,000,000 in FY2006, and \$2,658,000,000 for the period of fiscal years 2006 through 2010." The resolution assumed that the committee would report legislation to open ANWR to development, and that leasing would generate \$2.5 billion in revenues for the federal government over five years. Senator Cantwell offered a floor amendment (S.Amdt. 168) on March 16 to remove these instructions. The amendment was defeated (yeas 49, nays 51, Roll Call #52). The House budget resolution (H.Con.Res. 95, H.Rept. 109-17), while instructing the House Resources Committee to provide somewhat smaller reductions in outlays, did not include specific assumptions about ANWR revenues.

In the end, the budget resolution (H.Con.Res. 95, H.Rept. 109-62) approved by the House and Senate on April 28, 2005, contained reductions in spending targets of \$2.4 billion over FY2006 to FY2010 for the House Resources and Senate Energy Committees, which would be difficult to achieve unless ANWR development legislation is passed. The inclusion of the Senate target particularly set the stage for

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<sup>6</sup> For more on the budget process and budget enforcement, see CRS Report RS20368, *Overview of the Congressional Budget Process*; and CRS Report 98-815, *Budget Resolution Enforcement*, both by Bill Heniff, Jr. For ANWR and reconciliation, see CRS Report RS22304, *ANWR and FY2006 Budget Reconciliation Legislation*, by Bill Heniff, Jr., and M. Lynne Corn.

including ANWR development legislation in a reconciliation bill, since reconciliation bills cannot be filibustered (i.e., they require only a simple majority, rather than 60 votes to invoke cloture).

Under the Congressional Budget Act of 1974 (CBA, Titles I-IX of P.L. 93-344, as amended, 2 U.S.C. §§601-688), while the target reductions of the budget resolutions are binding on the committees, the associated assumptions are not. The Senate Energy and Natural Resources Committee did choose to meet its target by recommending ANWR legislation, and the Budget Committee incorporated the recommendation as Title IV of S. 1932, the Deficit Reduction Act of 2005. There was some question procedurally as to whether Senate rules would permit ANWR legislation to be part of a reconciliation bill.<sup>7</sup> The House Resources Committee included ANWR development legislation, and other spending reductions and offsetting collections, thereby more than meeting the committee's targets. These measures were incorporated by the House Budget Committee into an omnibus reconciliation bill (H.R. 4241). However, before the House bill came to the floor, considerable opposition to the ANWR provision developed among a number of House Republicans, 24 of whom signed a letter to the Speaker opposing its inclusion. The provision was removed before floor consideration; S. 1932 (with the text of H.R. 4241 inserted in lieu — minus an ANWR provision) passed the House on November 18, 2005 (yeas 217, nays 215; Roll Call #601). The difference on ANWR was a major issue in conference. In the end, the conference report (H.Rept. 109-362) omitted ANWR development. The House passed the conference report, but since the Senate approved the report with an amendment, reconciliation was unresolved. In the end, the final bill (P.L. 109-171) did not contain ANWR provisions.

**ANWR in the Defense Appropriations Bill.** As Congress moved toward the December recess, and the chance of an agreement on reconciliation with an ANWR provision seemed to fade, Senator Stevens (Chair of the Defense Appropriations Subcommittee) added an ANWR development title to the FY2006 Defense appropriations bill (H.R. 2863) in conference. Since most observers held that the Defense appropriations bill was “must-pass” legislation, Senators opposing ANWR were forced to choose between filibuster of the popular measure or acquiescing to opening the Refuge. Members began a filibuster, and a cloture motion failed to receive 60 votes (yeas 56, nays 44, Roll Call #364). While the conference report was approved, the relevant two divisions (C and D) were removed through House and Senate passage of S.Con.Res. 74, correcting the enrollment of the bill (P.L. 109-148).

**Omnibus Energy Legislation.** On April 13, 2005, the House Resources Committee considered and marked up its portion of the omnibus energy bill, before the bill was introduced. The provisions approved by the committee were then incorporated into the House version of H.R. 6 and introduced by Representative Barton, Chair of the Energy and Commerce Committee, on April 18. During House consideration on April 20, Representatives Markey and Johnson offered an amendment (H.Amdt. 73) to strike the title; it was rejected (yeas 200, nays 231, Roll

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<sup>7</sup> See CRS Report RL30862, *The Budget Reconciliation Process: The Senate's “Byrd Rule,”* by Robert Keith.

Call #122). The House passed H.R. 6 on April 21 (yeas 249, nays 183, Roll Call #132). The Senate passed its version of H.R. 6 on June 28, 2005 (yeas 85, nays 12, Roll Call #158). The Senate version contained no ANWR development provisions. (See CRS Report RL32936, *Omnibus Energy Legislation, 109th Congress: Assessment of H.R. 6 as Passed by the House*, for details of this bill.) The ANWR title was omitted in the final measure (P.L. 109-58).

## **Major Legislative Issues in the 107<sup>th</sup>, 108<sup>th</sup>, and 109<sup>th</sup> Congresses**

Some of the issues that have been raised most frequently in the ANWR debate are described briefly below. In addition to the issue of whether development should be permitted at all, key aspects of the debate include specifications that might be provided in legislation, including the physical size, or footprint, of development; the activities that might be permitted on Native lands; the disposition of revenues; labor issues; oil export restrictions; compliance with the National Environmental Policy Act, and other matters. (References below to the “Secretary” refer to the Secretary of the Interior, unless stated otherwise.)

**107<sup>th</sup> Congress.** H.R. 4, as passed by the House, was the model for two Senate amendments (S.Amdt. 3132 and S.Amdt. 3133), with some important variations. With brief background information for each topic, H.R. 4 is analyzed below, along with a few of the major features of the rejected Senate amendments to S. 517 (where these differ significantly from H.R. 4), and the two wilderness bills. (More background on each topic can be found in CRS Report RL31278.)

**108<sup>th</sup> Congress.** The analyses below describe features of H.R. 6 as passed by the House and H.R. 4514 (identical, except as noted in “Revenue Disposition,” below). S. 2095 and the Senate version of H.R. 6 had no provision to develop the 1002 area, but any provisions corresponding to issues below are also described.

**109<sup>th</sup> Congress, First Session.** The analyses below describe the ANWR title (the “House bill”) of the reconciliation recommendations as submitted by the House Committee on Resources (and later dropped before floor consideration), the provisions of Division C of the conference report on H.R. 2863 (the “Defense bill”), and §4001 of S. 1932, the Senate reconciliation bill (the “Senate bill”). Because of the lack of detail in §4001, many aspects of ANWR leasing would have been left to administrative decisions, with levels of public participation in some instances curtailed along with judicial review, as noted below.

**Environmental Direction.** Should Congress open the Refuge to energy leasing, it could choose to leave environmental matters to administrative agencies under existing laws. Alternatively, Congress could impose a higher standard of environmental protection because the area is in a national wildlife refuge or because of the fragility of the arctic environment, or it could legislate a lower standard to facilitate development. The degree of discretion given to the administering agency could also affect the stringency of environmental protection. For example, Congress could include provisions requiring use of “the best available technology” or “the best commercially available technology” or similar general standards; alternatively, it

could limit judicial review of environmental standards. Another issue would be the use of gravel and water resources essential for oil exploration and development. Congress could also leave environmental protection largely up to the administering agency — to be accomplished through regulations, or through lease stipulations. The former require public notice and comment, while the latter do not involve public participation, and may provide fewer public enforcement options. Other legislative issues include limitations on miles of roads or other surface occupancy; the adequacy of existing pollution standards; prevention and treatment of spills; the adequacy of current environmental requirements; and aircraft overflights, among other things.

**107<sup>th</sup> Congress.** H.R. 4 (§6507(a)) would have required the Secretary to administer a leasing program so as to “result in no significant adverse effect on fish and wildlife, their habitat, subsistence resources, and the environment, ... including ... requiring the application of the best commercially available technology....” H.R. 4 (§6503(a)(2)) would have also required that this program be done “in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.” It is unclear how the two goals of environmental protection and of fair market value related to each other (e.g., if environmental restrictions might make some fields uneconomic). H.R. 4 (§6506(a)(3) and (5)) would have required lessees to be responsible and liable for reclamation of lands within the Coastal Plain to support pre-leasing uses or to a higher use approved by the Secretary. There were requirements for mitigation, development of regulations by DOI, and other measures to protect the environment. These included prohibitions on public access to service roads and other transportation restrictions. Other provisions could also have affected environmental protection. H.R. 770 and S. 411 would have designated the area as wilderness, as discussed below.

**108<sup>th</sup> Congress.** The House bill did not name a lead agency, but since §30403(a) stated that the program would be administered under the Mineral Leasing Act, BLM seemed likely to lead. The House bill (§30407(a)) would have required the Secretary to administer the leasing program so as to “result in no significant adverse effect on fish and wildlife, their habitat, and the environment, [and to require] the application of the best commercially available technology....” The House bill (§30403(a)(2)) would also have required that this program be done “in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.” It is unclear how the two goals of environmental protection and of fair market value were to relate to each other (e.g., if environmental restrictions might make some fields uneconomic). As in the 107<sup>th</sup> Congress, the House bill (§§30406(a)(3) and (5)) was identical to §§6506(a)(3) and (5) in the 107<sup>th</sup> Congress. H.R. 770 and S. 543 would have designated the area as wilderness, as discussed below.

**109<sup>th</sup> Congress, First Session.** The House bill as reported would have named BLM as the lead agency. Section 6107(a) would require the Secretary to administer the leasing program so as to “result in no significant adverse effect on fish and wildlife, their habitat, and the environment, [and to require] the application of the best commercially available technology....” Section 6103(a)(2) would also have required that this program be done “in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.” It is unclear how the two goals of environmental protection and fair market value are to relate to each



other (e.g., if environmental restrictions might make some fields uneconomic). Subsections 6106(a)(3) and (5) would require lessees to be responsible and liable for reclamation of lands within the Coastal Plain (unless the Secretary approves other arrangements), and the lands must support pre-leasing uses or a higher use approved by the Secretary. There were requirements for mitigation, development of regulations, and other measures to protect the environment. These included prohibitions on public access to service roads and other transportation restrictions. Other provisions might also affect environmental protection. (See “Judicial Review,” below.) The Defense bill (§7) was similar to the House bill. The Senate bill (§4001(b)(1)(B)) directed the Secretary to establish and implement an “environmentally sound” leasing system, but did not provide further direction.

**The Size of Footprints — Federal Lands.** Newer technologies permit greater consolidation of leasing operations, which would tend to reduce environmental impacts of development. One aspect of the debate in Congress has focused on the size of footprints in the development and production phases of energy leasing. The term *footprint* does not have a universally accepted definition, and therefore the types of structures falling under a “footprint restriction” are arguable (e.g., the inclusion of exploratory structures, roads, gravel mines, port facilities, etc.; see CRS Report RL32108, *North Slope Infrastructure and the ANWR Debate*, by M. Lynne Corn.) In addition, it is unclear whether exploratory structures or structures on Native lands would be included under any provision limiting footprints. (See CRS Report RS22143, *Oil and Gas Leasing in the Arctic National Wildlife Refuge (ANWR): The 2,000-Acre Limit*, by Pamela Baldwin and M. Lynne Corn, for a discussion of an acreage limit.) The new map accompanying the Senate bill includes the Native lands in the Coastal Plain leasing area, but how the federal leasing program will apply to those lands is not clear. See “New Maps,” below.

Development advocates have emphasized the total acreage of surface disturbance, while opponents have emphasized the dispersal of not only the structures themselves but also their impacts over much of the 1.5 million acres of the 1002 area. One single consolidated facility of 2,000 acres (3.1 square miles, a limit currently supported by some development advocates) would not permit full development of the 1002 area. Instead, full development of the 1002 area would require that facilities, even if limited to 2,000 acres in total surface area, be widely dispersed. Dispersal is necessary due to the limits of lateral (or extended reach) drilling: the current North Slope record for this technology is 4 miles. If that record were matched on all sides of a single pad, at most about 4% of the Coastal Plain could be developed from that pad. Even if the current world record (seven miles) were matched, only about 11% of the 1002 area could be accessed from a single compact 2,000-acre facility. In addition, drilling opponents argue that energy facilities have impacts on recreation, subsistence, vegetation, and wildlife well beyond areas actually covered by development.

**107<sup>th</sup> Congress.** H.R. 4 (§6507(d)(9)) would have provided for consolidation of leasing operations; among other things, consolidation would tend to reduce environmental impacts of development. H.R. 4 (§6507(a)(3)) would have gone further to require, “consistent with the provisions of section 6503” (which included ensuring receipt of fair market value), that the Secretary administer the leasing program to “ensure that the maximum amount of surface acreage covered by

production and support facilities, including airstrips and any areas covered by gravel berms or piers for the support of pipelines, does not exceed 2,000 acres on the Coastal Plain.” A floor amendment to H.R. 4 with this acreage restriction was passed on August 1, 2001 (yeas 228, nays 201; Roll Call #316). The terms used were not defined in the bill (nor discussed in the committee report), and therefore the full set of structures that might have fallen under the restriction was arguable (e.g., whether roads, gravel mines, and structures on Native lands would be included under this provision). Floor debate focused on the extent to which the facilities covered in the amendment would be widely distributed around the Refuge. The acreage limitation appeared not to apply to Native lands.

**108<sup>th</sup> Congress.** The House bill (§30407(d)(9)) provided for consolidation of leasing operations in language identical to that in the 107<sup>th</sup> Congress. A floor amendment by Representative Wilson (NM) to the House bill with an identical 2000-acre limit was passed on April 10, 2003 (yeas 226, nays 202; Roll Call #134). Floor debate focused on the extent to which the facilities would be widely distributed around the Refuge. In addition, Native lands might not have been limited by this provision. (See “Native Lands,” below.)

**109<sup>th</sup> Congress, First Session.** The House bill as reported (§6107(d)(9)) would have provided for consolidation of leasing operations to reduce environmental impacts of development. House §6107(a)(3) further would have required, “consistent with the provisions of section 6103” (which include ensuring receipt of fair market value), that the Secretary administer the leasing program to “ensure that the maximum amount of surface acreage covered by production and support facilities, including airstrips and any areas covered by gravel berms or piers for the support of pipelines, does not exceed 2,000 acres on the Coastal Plain.” The terms used were not defined in the bill and therefore the range of structures covered by the restriction is arguable (e.g., whether roads, gravel mines, causeways, and water treatment plants would be included under this provision). In addition, the wording may not apply to structures built during the exploratory phase. An essentially identical provision (§4001(f)) is found in the Senate bill and the Defense bill (§7(a)(3)). The Defense bill also called for facility consolidation (§7(d)(4)) and for the Secretary to develop a consolidation plan (§7(f)).

**Native Lands.** ANCSA resolved aboriginal claims against the United States by (among other things) creating village corporations that could select lands to which they held the surface estate, and regional corporations that could select surface and subsurface rights as well. The surface lands (originally approximately three townships) selected by Kaktovik Inupiat Village (KIC) are along the coastal plain of ANWR (but were administratively excluded from being considered as within the “1002 Coastal Plain”). These lands and a fourth township that is within the defined Coastal Plain (totaling approximately 92,000 acres) are all within the Refuge and subject to regulations of the Refuge. The Arctic Slope Regional Corporation (ASRC) obtained subsurface rights beneath the KIC lands pursuant to a 1983 land exchange agreement. In addition, there are currently more than 10,000 acres of conveyed and individually owned Native allotments in the 1002 area of the Refuge that are not subject to Refuge regulations. Were oil and gas development authorized for the federal lands in the Refuge, development would then be allowed or become feasible on the nearly 100,000 acres of Native lands, possibly free of any acreage limitation

applying to development on the federal lands, depending on how legislation is framed. The extent to which the Native lands could be regulated to protect the environment is uncertain, given the status of allotments and some of the language in the 1983 agreement with ASRC. (See also CRS Report RL31115, and “New Maps,” below.)

**107<sup>th</sup> Congress.** H.R. 4 would have repealed the ANILCA prohibition on oil and gas development. If oil and gas development were authorized for the federal lands in the Refuge, it appears that development could occur on the more than 100,000 acres of Native lands, arguably free of any acreage limitation applying to development on the federal lands. The extent to which the Native lands could be regulated to protect the environment is uncertain, given the status of allotments and some of the language in the 1983 agreement with ASRC. (See CRS Report RL31115 for additional legal analysis.) After the cloture vote on S.Amdt. 3132 on April 18, 2002, Senator Stevens publicly stated his intent to offer an amendment to open Native lands in this part of the Refuge to energy development, but he did not to do so.

**108<sup>th</sup> Congress.** The House bill would have repealed the ANILCA prohibition on oil and gas development. (See preceding paragraph.)

**109<sup>th</sup> Congress, First Session.** See “New Maps,” below.

**New Maps.** Both the House and Senate have created new maps of the “Coastal Plain” that will be the subject of leasing. See CRS Report RS22326, *Legislative Maps of ANWR*, by M. Lynne Corn and Pamela Baldwin. The Coastal Plain was defined in §1002 of ANILCA as the area indicated on an August 1980 map. This map is now missing. An administrative articulation of the boundary was authorized by §103(b) of ANILCA and has the force of law. This legal description was completed in 1983 (48 *Federal Register* 16838), but questions also surround this description. (See CRS Report RL31115.) The description excluded three Native townships from the articulated coastal plain. Some bills in various Congresses also have excluded these same Native lands by referring to the 1980 map and the administrative description. However, since the 1980 map is missing, evaluating whether the administrative description properly excluded the Native lands is impossible, and, as noted, the fourth Native township (selected later) was not excluded from the coastal plain by that description.

**109<sup>th</sup> Congress.**<sup>8</sup> The Senate Energy Committee bill (§4001(a)) provided a new map, dated September 2005, to accompany its submission to the Budget Committee for reconciliation. This map includes all Native lands in the “Coastal Plain”(see Figure 1 in CRS Report RS22326). However, the bill text remains unchanged and it is not clear what extent of federal control of Native lands was intended or accomplished by the map change. For example, language is retained that “notwithstanding any other provision of law” directs a 50/50 revenue split between the state of Alaska and the federal government, thereby possibly giving rise to Native claims for compensation for revenues from their lands. If this provision was not

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<sup>8</sup> The issue of new maps was first raised in legislation in the 109<sup>th</sup> Congress.

intended to apply to Native lands, it is not clear whether other provisions also might not apply. Also, some of the terms in the 1983 agreement with ASRC call for an express congressional override to negate their effects, and the text of the bill does not discuss the Native lands. The Defense bill also used a USGS map dated September 2005 (§2(4)); it is not clear whether the map is the same as the one referred to in the Senate bill. The House also adopted a new map, dated October 25, 2005. It appears to follow the 1983 administrative articulation of the Coastal Plain. The map appears to exclude the three Native townships, but leave the fourth within the coastal plain to which the leasing provisions would arguably apply.

**Revenue Disposition.** Another issue that has arisen during debates over leasing in the ANWR is that of disposition of possible revenues — whether Congress may validly allocate revenues according to a formula other than the 90/10 percent split specified in the Alaska Statehood Act. A court in *Alaska v. United States*, (35 Fed. Cl. 685, 701 (1996)) seems to have indicated that the language in the Statehood Act means that Alaska is to be treated like other states under the Mineral Leasing Act of 1920 (MLA; ch. 85; 30 U.S.C. 181), which contains (basically) a 90/10 split. However, Congress can establish a non-MLA leasing regimen with a different ratio — for example, the separate leasing arrangements that govern the National Petroleum Reserve-Alaska (where the revenue-sharing formula is 50/50).

In the past, a number of ANWR bills have specified the disposition of the federal portion of the revenues. Among the spending purposes have been federal land acquisition, energy research, and federal assistance to local governments in Alaska to mitigate the impact of energy development. Amounts would have been either permanently or annually appropriated. In the latter case, there would be little practical distinction between annually appropriating funds based on ANWR revenues and annually appropriating funds from the General Treasury. If there is no particular purpose specified for leasing revenues, the resulting revenues would be deposited in the Treasury where they would be available for any general government use.

**107<sup>th</sup> Congress.** Several sections of H.R. 4 related to revenues. Section 6512 would have provided that 50% of adjusted revenues be paid to Alaska. Then 50% of revenues from bonus payments were to go into a Renewable Energy Technology Investment Fund; and 50% from rents and royalties were to go into a Royalties Conservation Fund. It is not clear whether the basis for the shared revenues was to be gross or net receipts. More fundamentally, under §6503(a), the Secretary was to establish and implement a leasing program *under the Mineral Leasing Act*, yet §6512 directed a revenue sharing program different from that in the MLA. Establishing a leasing program under the MLA, yet providing for a different revenue disposition could have raised additional questions of legal validity. If the alternative disposition were struck down and the revenue provisions were determined to be severable, it is possible that Alaska could have received 90% of the revenues from ANWR.

**108<sup>th</sup> Congress.** Several sections of the House bill related to revenues. Section 30409 would have provided that 50% of adjusted revenues be paid to Alaska, and the balance deposited in the U.S. Treasury as miscellaneous receipts, except for the portion allocated to a fund to assist Alaska communities in addressing local impacts of energy development under §30412. The assistance fund was not to exceed \$11 million in an unspent balance, with \$5 million available for annual

appropriation. Section 30403(a) was identical to §6503(a) (establishing a leasing program under the MLA) in the 107<sup>th</sup> Congress. In addition, in the House version of H.R. 6, §30409(c) would have allowed certain revenues from bids for leasing to be appropriated for energy assistance for low-income households. This provision was lacking in H.R. 4514 — the only difference between the two bills.

**109<sup>th</sup> Congress, First Session.** Several sections of the House bill as reported related to revenues. Section 6109 would have provided that 50% of adjusted revenues be paid to Alaska, and the balance be deposited in the U.S. Treasury as miscellaneous receipts, except for a portion (not to exceed \$11 million in an unspent balance, with \$5 million available for annual appropriation). Under §6112, this portion was to assist Alaska communities in addressing local impacts of energy development. Under §6103(a), the Secretary was to establish and implement a leasing program *under the Mineral Leasing Act*, yet “notwithstanding any other provision of law,” §6112 directed a revenue sharing program different from that in the MLA. Establishing a leasing program “under the MLA,” yet providing for a different revenue disposition, could raise validity questions. If the alternative disposition were struck down and the revenue provisions were determined to be severable, Alaska could receive 90% of ANWR revenues. In a different subtitle, §6514 would have created the Federal Energy Natural Resources Enhancement Fund and applied a portion of moneys received under the revenues section of the MLA to certain wildlife and habitat purposes. It is not clear whether moneys from ANWR leasing would be eligible for this use, since leasing in ANWR, if under the MLA, would have special revenue splitting provisions. The Senate bill does not refer to leasing being under the MLA, and “notwithstanding any other provision of law” directs receipts from leasing and operations “authorized under this section” to be divided equally between the state of Alaska and the federal government. Because of the change in the Senate definition of “Coastal Plain,” this provision may include revenues from Native lands. The Defense bill (Division D, §1) also provided for a 50/50 split, and the division contained various provisions for distribution of certain percentages of the federal share to various purposes, including hurricane relief. In addition, §14 of Division C provided explicitly that if any portion of either Division Cor D were held to be unconstitutional, the remainder of the two divisions would not be affected.

**Natural Gas Pipeline.** Significant quantities of natural gas are known to exist in the developed oil fields on the North Slope, but cannot be sold elsewhere for lack of transportation. If a natural gas pipeline were constructed from these fields, any natural gas in ANWR might become economic as well. A decision to construct a pipeline to transport natural gas from Alaska to North American markets entails risk as well as a decision on the route.

**107<sup>th</sup> Congress.** The Senate version of H.R. 4 attempted to address the pipeline by providing federal guarantees for loans to construct a natural gas transport system. Guarantees were not to exceed 80% of a loan; and the total loan principal to which guarantees apply was not to exceed \$10 billion. The Senate bill also provided for a tax credit for the production of Alaska North Slope gas that effectively established a price floor of \$3.25 per thousand cubic feet. Both the House and the Senate versions addressed the route issue by prohibiting the licensing of a route that enters Canada north of 68° latitude. Canadian energy industry interests objected to

the prohibition of the northern route through Canada (a southern route would bypass gas reserves in far northwest Canada), and they said that the tax credit would have given Alaskan gas producers a price advantage over Canadian producers.

**108<sup>th</sup> Congress.** The Senate's revised bill, S. 2095, provided a loan guarantee not to exceed 80% of the total capital cost of the project, nor to exceed \$18 billion (indexed for inflation), and had a tax credit mechanism that effectively would guarantee a minimum price for natural gas transported through the pipeline. The House's H.R. 6 would have provided no means of reducing risk nor other economic incentive to build. Regarding the route, the House bill, both Senate bills, and the conference on H.R. 6 report prohibited the licensing of a route that enters Canada north of 68° latitude. Canadian energy interests opposed a production tax credit for Alaskan gas producers, which would tend to give a price advantage over Canadian producers. They also objected to the prohibition of a northern route through Canada because a southern route would bypass gas reserves in far northwest Canada. In fact, Canadian interests are moving to build a pipeline from that area.

**109<sup>th</sup> Congress.** Because of actions in the 108<sup>th</sup> Congress, this issue was not raised in the 109<sup>th</sup> Congress, first session.

**Project Labor Agreements.** A recurring issue in federal or federally-funded projects is whether project owners or contractors effectively should be required, by "agreement," to use union workers. Project labor agreements (PLAs) are agreements between a project owner or main contractor and the union(s) representing the craft workers for a particular project that establish the terms and conditions of work that will apply for the particular project. The agreement may also specify a source (such as a union hiring hall) to supply the craft workers for the project. Typically, the agreement is binding on all contractors and subcontractors working on the project, and specifies wage rates and benefits, discusses procedures for resolving labor and jurisdictional disputes, and includes a no-strike clause. Proponents argue that PLAs ensure a reliable, efficient labor source and help keep costs down. Opponents contend that PLAs inflate project costs and decrease competition. There are few independent data to sort out these conflicting assertions and demonstrate whether PLAs contribute to lower or higher project costs.

**107<sup>th</sup> Congress.** H.R. 4 (§6506) directed the Secretary to require lessees "to negotiate to obtain a project labor agreement." The Secretary was to do so "recognizing the Government's proprietary interest in labor stability and the ability of construction labor and management to meet the particular needs and conditions of projects to be developed ...." In §714 of the Senate-passed version of H.R. 4, the Senate "urges" the sponsors of any pipeline project to carry natural gas south to U.S. or Canadian markets from North Slope development (on or off the Refuge) "to negotiate a project labor agreement to expedite construction of the pipeline."

**108<sup>th</sup> Congress.** The House's H.R. 6 contained the same requirement for a PLA. The gas pipeline provisions in the House and Senate bills both urged the sponsors of the pipeline project "to negotiate a project labor agreement to expedite construction of the pipeline."

**109<sup>th</sup> Congress, First Session.** The House bill (§6106(b)) as reported would have directed the Secretary to require lessees in the 1002 area to “negotiate to obtain a project labor agreement” — “recognizing the Government’s proprietary interest in labor stability and the ability of construction labor and management to meet the particular needs and conditions of projects to be developed....” The Defense bill (§6(b)) contained similar provisions, but the Senate bill had no similar provision.

**Oil Export Restrictions.** Export of North Slope oil in general, and any ANWR oil in particular, has been an issue, beginning at least with the authorization of the TransAlaska Pipeline (TAPS) in 1973, and continuing into the current ANWR debate. Much of the TAPS route is on federal lands and the MLA prohibits export of oil transported through pipelines granted rights-of-way over federal lands (16 U.S.C. §185(u)). The Trans-Alaska Pipeline Authorization Act (P.L. 93-153, 43 U.S.C. §1651 et seq.), specified in 1973 that oil shipped through it could be exported only under restrictive conditions. Subsequent legislation strengthened the export restrictions further.<sup>9</sup> Oil began to be shipped through the pipeline in increasing amounts as North Slope oilfield development grew in the 1970s and 1980s. With exports effectively banned, most of the North Slope oil went to West Coast destinations; the rest was shipped to the Gulf Coast via the Panama Canal or overland across the isthmus. In the early and mid-1990s, the combination of California, North Slope, and federal offshore production, plus imports, produced large crude oil supplies relative to demand. California prices fell, causing complaints from California and North Slope producers.

By 1995, several years of low world oil prices and relative calm in the Mideast had reduced concern about petroleum supplies. Market forces eventually created pressure to change the law. On November 28, 1995, P.L. 104-58 (109 Stat. 557) was enacted, Title II of which amended the MLA to provide that oil transported through TAPS may be exported unless the President finds, after considering stated criteria, that it is *not* in the national interest. The President may impose terms and conditions; and authority to export may be modified or revoked. ANS exports rose to a peak of 74,000 barrels/day in 1999, representing 7% of North Slope production. North Slope oil exports ceased voluntarily in May 2000 and have since been minimal, as Alaska producers found adequate U.S. markets at world prices.

If Congress wished to limit export of any oil from the 1002 area, it might again apply the restriction to ANWR oil transported through TAPS. However, if current warming trends in the Arctic continue, oil shipment via tanker could become practical. If crude oil prices provided sufficient incentive for such shipments, an export ban that applies only to oil transported through TAPS would not be sufficient to prevent export of any ANWR oil.

**107<sup>th</sup> Congress.** H.R. 4 (§6506 (a)(8)) would have required the Secretary to prohibit export of oil produced under a lease in the 1002 area as a condition of a lease.

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<sup>9</sup> The Energy Policy and Conservation Act of 1975 (P.L. 94-163), the 1977 amendments to the Export Administration Act (P.L. 95-52 and P.L. 95-223), and the Export Administration Act of 1979 (P.L. 96-72), which replaced the Export Administration Act of 1969.

**108<sup>th</sup> Congress.** The House bill (§30406(a)(8)) would have required the prohibition on the export of oil produced in the 1002 area as a condition of a lease.

**109<sup>th</sup> Congress, First Session.** The House bill as reported (§6106(a)(8)) would have prohibited the export of oil produced in the 1002 area as a condition of a lease. The Senate bill (§4001(g)) contained a similar provision, as did the Defense bill (§12).

**NEPA Compliance.** The National Environmental Policy Act (NEPA; P.L. 91-190; 42 U.S.C. §4321) requires the preparation of an environmental impact statement (EIS) to examine the effects of major federal actions on the environment, and to provide public involvement in agency decisions. The last full EIS examining the effects of energy development in ANWR was the Final Legislative Environmental Impact Statement (FLEIS) completed in 1987, and some observers assert that a new EIS is needed to support development now. NEPA requires an EIS to analyze an array of alternatives, including a “no action” alternative. Some development supporters would like to see the process truncated, in light of past analyses and to hasten production. Development opponents, and NEPA supporters, argue that the 19-year gap and changed circumstances since the last analysis necessitates a thorough update, and stress the flaws they found in the 1987 FLEIS.

**107<sup>th</sup> Congress.** Both bills addressed the issue. H.R. 4 (§6503(c)) deemed the 1987 FLEIS adequate with respect to actions by the Secretary to develop leasing regulations, yet required the Secretary to prepare an EIS with respect to other actions, some of which might require only a (usually shorter) “environmental assessment.” Consideration of alternatives was to be limited to two choices: a preferred option and a “single leasing alternative.” (Generally, an EIS analyzes a range of alternatives, including a “no action” alternative.)

**108<sup>th</sup> Congress.** Section 30403(c) of the House bill had the same provisions on NEPA compliance.

**109<sup>th</sup> Congress, First Session.** Section 6103(c) of the House bill as reported would have deemed the 1987 FLEIS to satisfy NEPA requirements with respect to prelease activities and the development and promulgation of leasing regulations, and required the Secretary to prepare an EIS of all other actions authorized by the subtitle before the first lease sale. Consideration of alternatives was to be limited to two choices, a preferred leasing action and a “single leasing alternative.” (Generally, an EIS must analyze several alternatives, including a “no action” alternative.) Compliance with the subsection was deemed to satisfy all requirements to analyze the environmental effects of proposed leasing. The Defense bill (Division C) was essentially identical. S. 1932 (§4001(c)) had similar provisions, but did not expressly require an EIS for leasing.

**Compatibility with Refuge Purposes.** Under current law for the management of national wildlife refuges (16 U.S.C. §668dd), and under 43 C.F.R. §3101.5-3 for Alaskan refuges specifically, an activity may be allowed in a refuge only if it is compatible with the purposes of the particular refuge and with those of the refuge system as a whole.



**107<sup>th</sup> Congress.** H.R. 4 (§6503(c)) stated that the oil and gas leasing program and activities in the Coastal Plain were deemed to be compatible with the purposes for which ANWR was established and that no further findings or decisions were required to implement this determination. This language appears intended to answer the compatibility question and to eliminate the usual compatibility determination processes. The general statement that leasing “activities” are compatible arguably encompassed necessary support activities such as construction and operation of port facilities, staging areas, personnel centers, etc.

**108<sup>th</sup> Congress.** Section 30403(c) of the House bill had the same provisions as in the 107<sup>th</sup> Congress.

**109<sup>th</sup> Congress, First Session.** Section 6103(c) of the House bill as reported, the Defense bill (§3(c)), and §4001(c) of S. 1932 state that the energy leasing program and activities in the coastal plain are deemed to be compatible with the purposes for which ANWR was established and that no further findings or decisions are required to implement this determination. This language appears to eliminate the usual compatibility determination processes. The extent of leasing “activities” that might be included as compatible is debatable and arguably might encompass necessary support activities, such as construction and operation of port facilities, staging areas, and personnel centers.

**Judicial Review.** Leasing proponents urge that any ANWR leasing program be put in place promptly and argue that expediting, curtailing, or prohibiting judicial review is desirable to achieve that goal. Judicial review can be expedited through procedural changes, such as reducing the time limits within which suits must be filed, avoiding some level of review, curtailing the scope of the review, or increasing the burden imposed on challengers. In the past, bills before Congress have combined various elements.

**107<sup>th</sup> Congress.** H.R. 4 contemplated prompt action to put a leasing program in place and had sections on expedited judicial review. H.R. 4 would have required that complaints be filed within 90 days. H.R. 4 (§§6508(a)(1) and (2)) appeared to contradict each other as to where suits are to be filed and it is possible part of a sentence was omitted. H.R. 4 (§6508(a)(3)) would also have limited the scope of review by stating that review of a Secretarial decision, including environmental analyses, was to be limited to whether the Secretary complied with the terms of Division F of H.R. 4, be based on the administrative record, and that the Secretary’s analysis of environmental effects was “presumed to be correct unless shown otherwise by clear and convincing evidence to the contrary.” This standard in this context arguably would make overturning a decision more difficult.

**108<sup>th</sup> Congress.** The House bill (§30408) had the same provisions as in the 107<sup>th</sup> Congress.

**109<sup>th</sup> Congress, First Session.** The House bill as reported (§6108) required that any complaints seeking judicial review be filed within 90 days. Sections 6108(a)(1) and (a)(2) appeared to contradict each other as to whether suits are to be filed in “any appropriate district court” or in the Court of Appeals in Washington, DC. The Defense bill (§8(a)) specified the latter. The House bill

(§6108(a)(3)) would also have limited the scope of review by stating that review of a secretarial decision, including environmental analyses, would be limited to whether the Secretary complied with the terms of the ANWR subtitle, that it would be based on the administrative record, and that the Secretary's analysis of environmental effects is "presumed to be correct unless shown otherwise by clear and convincing evidence to the contrary." This standard is unclear, but in this context arguably would make overturning a decision more difficult. S. 1932 and the Defense bill are similar, but require complaints to be filed only in the U.S. Court of Appeals in Washington, DC (§4001(c) and §8(a), respectively). The Senate bill omits the presumption concerning the Secretary's analysis of environmental effects.

**Special Areas.** Some have raised the possibility of setting aside certain areas in the coastal plain for protection of their ecological or cultural values. This could be done by designating the areas specifically in legislation, or by authorizing the Secretary to set aside areas to be selected after enactment. The FLEIS identified four special areas that together total more than 52,000 acres. The Secretary could be required to restrict or prevent development in these areas or any others that may seem significant, or to select among areas if an acreage limitation on such set-asides is imposed.

**107<sup>th</sup> Congress.** H.R. 4 (§6503(e)) allowed the Secretary to set aside up to 45,000 acres of special areas, and named one specific area in which leases, if permitted, would forbid surface occupancy. As mentioned above, The FLEIS identified four special areas which together total more than 52,000 acres, so the Secretary would have been required to select among these areas or any others that may seem significant. H.R. 770 and S. 411 would have designated the entire 1002 area as wilderness.

**108<sup>th</sup> Congress.** The House bill (§30403(e)) had the same provisions as in the 107<sup>th</sup> Congress. Section 30403(f) also stated that the closure authority in the ANWR title was to be the Secretary's sole authority, which might limit possible secretarial actions under the Endangered Species Act (P.L.93-205; 16 U.S.C. §1531ff). H.R. 770 and S. 543 would have designated the entire 1002 area as wilderness.

**109<sup>th</sup> Congress, First Session.** The House bill as reported (§6103(e)) would have allowed the Secretary to set aside up to 45,000 acres (and names one specific special area) in which leases, if permitted, would forbid surface occupancy. As mentioned above, the FLEIS identified four special areas that together total more than 52,000 acres, so the Secretary would be required to select among these areas or any others that may seem significant. Section 6103(f) also stated that the closure authority in the ANWR title is to be the Secretary's sole authority, which might limit possible secretarial actions under the Endangered Species Act. The Defense bill (§3(e)) was essentially identical. The Senate bill had no provision for special areas.

**Non-Development Options.** Several options have been available to Congress to either postpone or forbid development, unless Congress were later to change the law. These options are allowing exploration only, designating the 1002 area as wilderness, and taking no action. The legislative history of these options is described below.

**Exploration Only.** Some have argued that the 1002 area should be opened to exploration first, before a decision is made on whether to proceed to leasing. Those with this view hold that with greater certainty about the presence or absence of energy resources, a better decision could be made about whether to open the coastal plain for full leasing. This idea has had relatively little support over the years. For those opposed to energy development, the reasons are fairly clear: if exploration results in no or insufficient economic discoveries, any damage from exploration would remain. If there were economic discoveries, support for further development might be unstoppable. Those who support development see unacceptable risks in such a proposal. First, who would be charged with carrying out exploration, who would pay for it, and to whom would the results be available? Second, if no economic discoveries were made, would that be because the “best” places (in the eyes of whatever observer) were not examined? Third, might any small discoveries become economic in the future? Fourth, if discoveries did occur, could industry still be foreclosed from development, or might sparse but promising data elevate bidding to unreasonable levels? Fifth, if exploration is authorized, what provisions, if any, should pertain to Native lands? In short, various advocates see insufficient gain from such a proposal, and it has not been introduced in recent years.

**Wilderness Designation.** Energy development is not permitted in wilderness areas, unless there are valid pre-existing rights or unless Congress specifically allows it or later reverses the designation. Development of the surface and subsurface holdings of Native corporations would be precluded inside wilderness boundaries (though compensation might be owed). It would also preserve existing recreational opportunities and jobs, as well as the existing level of protection of subsistence resources, including the Porcupine Caribou Herd.

**107<sup>th</sup> Congress.** H.R. 770 and S. 411 would have designated the 1002 area as wilderness.

**108<sup>th</sup> Congress.** H.R. 770 and S. 543 would have designated the 1002 area as wilderness.

**109<sup>th</sup> Congress, First Session.** H.R. 567 and S. 261 would designate the 1002 area as part of the National Wilderness System.

**Presidential Certification.** Under the two Senate amendments to S. 517 in the 107<sup>th</sup> Congress (which were ultimately rejected by the Senate), the leasing provisions would have taken effect upon a determination and certification by the President that development of the Coastal Plain is in the national economic and security interests of the United States. This determination and certification were to be in the sole discretion of the President and are not reviewable. This option has not been raised in other bills.

**No Action.** Because current law prohibits development unless Congress acts, this option also prevents energy development. Those supporting delay often argue that not enough is known about either the probability of discoveries or about the environmental impact if development is permitted. Others argue that oil deposits should be saved for an unspecified “right time.”

## Legislation in the 107<sup>th</sup> Congress

### **H.R. 4 (Tauzin)**

Division F, Title V, contained the provisions of H.R. 2436, with the inclusion of a new provision for a 50/50 federal/state revenue split. Introduced July 27, 2001; referred to Committees on Energy and Commerce, Science, Ways and Means, Resources, Education and the Workforce, Transportation and Infrastructure, the Budget, and Financial Services. August 1, 2001, House passed Sununu amendment to limit specified surface development to 2,000 acres (yeas 228, nays 201; Roll Call #316) and defeated Markey-Johnson (CT) amendment to strike Title V defeated (yeas 206, nays 223; Roll Call #317). Passed House August 2, 2001 (yeas 240, nays 189; Roll Call #320). House conferees appointed June 12, 2002. Senate struck all after enacting clause and substituted text of S. 517 (amended); passed Senate April 25, 2002 (yeas 88, nays 11; Roll Call #94). Senate appointed conferees May 1, 2002.

### **H.R. 39 (D. Young)**

Would have repealed current prohibition against ANWR leasing; directed the Secretary to establish competitive oil and gas leasing program; specified that the 1987 FLEIS would be sufficient for compliance with NEPA; authorized set-asides up to 45,000 acres of Special Areas that restrict surface occupancy; set minimum for royalty payments and for tract sizes; and for other purposes. Introduced January 3, 2001; referred to Committee on Resources.

### **H.R. 770 (Markey)**

Would have designated Arctic coastal plain of ANWR as wilderness. Introduced February 28, 2001; referred to Committee on Resources.

### **H.R. 2436 (Hansen)**

Title V would have repealed current prohibition against ANWR leasing; directed Secretary to establish competitive oil and gas leasing program; specified that the 1987 FLEIS would be sufficient for compliance with NEPA; authorized set-asides up to 45,000 acres of Special Areas that restrict surface occupancy; set minimum acreage for the first lease sale and minimum royalty payments; prohibited ANWR oil export; specified project labor agreements; and for other purposes. Introduced July 10, 2001; referred to Committee on Resources and on Energy and Commerce. Reported (amended) by Resources on July 25 (H.Rept. 107-160, Part I) and discharged by Energy and Commerce on July 25, 2001. Provisions incorporated into H.R. 4.

### **S. 388 (Murkowski)**

Title V would have opened the 1002 area to energy leasing; provided for the timing and size of lease sales; specified that the 1987 FLEIS would be sufficient for compliance with NEPA; required posting of bonds for reclamation; required expedited judicial review; authorized set-asides up to 45,000 acres of Special Areas that restrict surface occupancy; provided for a 50/50 revenue split with the state; required on-site inspections, provided for use of any federal revenues; and other purposes. Introduced February 26, 2001; referred to Committee on Energy and Natural Resources.

**S. 411 (Lieberman)**

Would have designated Arctic coastal plain of ANWR as wilderness. Introduced February 28, 2001; referred to Committee on Environment and Public Works.

**S. 517 (Bingaman)**

Would have authorized a program for technology transfer in the Department of Energy. Introduced March 12, 2001; referred to Committee on Energy and Natural Resources. Reported June 6, 2001 (S.Rept. 107-30). February 15, 2002, laid before Senate by unanimous consent. February 15, 2002, S.Amdt. 2917 (Daschle) proposed, authorizing an omnibus energy program. S.Amdt. 3132 (Murkowski) and S.Amdt. 3133 (Stevens) would have opened the Refuge to energy development; filed April 16, 2002; S.Amdt. 3133 failed cloture motion (36 yeas to 64 nays; Roll Call #70) and was withdrawn, April 18, 2002. S.Amdt. 3132 failed cloture motion (46 yeas to 54 nays; Roll Call #71) on April 18, 2002. A cloture motion was filed on S. 517 on April 18, 2002; cloture invoked April 23 (yeas 86, nays 13; Roll Call #77). Senate incorporated this measure in H.R. 4 as an amendment, April 25, 2002.

**S. 1766 (Daschle)**

Would have altered national energy programs in a variety of ways; lacked provisions to open ANWR. Introduced December 5, 2001; not referred to Committee.

## **Legislation in the 108<sup>th</sup> Congress**

**H.R. 6 (Tauzin)**

Title IV, Division C would have repealed current prohibition against ANWR development, created energy leasing program, and provided for distribution of revenues. Introduced April 7, 2003; referred to eight committees, including Committee on Resources. April 10, 2003, House passed Wilson (NM) amendment to limit specified surface development to 2,000 acres (yeas 226, nays 202; Roll Call #134) and defeated Markey-Johnson (CT) amendment to strike Title IV, Division C (yeas 197, nays 228; Roll Call #135). Passed House April 11, 2003 (yeas 247, nays 175; Roll Call #145). Passed Senate (amended, no ANWR development provisions) July 31, 2003 (yeas 84, nays 15; Roll Call #317). Conference report (H.Rept. 108-375) filed November 18, 2003. Conference report agreed to in House November 18, 2003 (yeas 246, nays 180; Roll Call #630). Cloture motion failed in Senate November 21, 2003 (yeas 57, nays 40; Roll Call #456).

**H.R. 39 (D. Young)**

Would have repealed current prohibition against development in ANWR; and for other purposes. Introduced January 7, 2003; referred to Committee on Resources.

**H.R. 770 (Markey)**

Would have designated the 1002 area of ANWR as wilderness. Introduced February 13, 2003; referred to Committee on Resources.

**H.R. 4514 (Pombo)**

Virtually identical to House-passed version of H.R. 6; see "Revenue Disposition," above, for only difference. Introduced June 4, 2004; referred to Committee on Resources.

**S. 543 (Lieberman)**

Would have designated the 1002 area of ANWR as wilderness. Introduced March 5, 2003; referred to Committee on Environment and Public Works.

## **Legislation in the 109<sup>th</sup> Congress, First Session**

**P.L. 109-148 (H.R. 2863)**

Provides for Defense appropriations. Conference report (H.Rept. 109-359) filed Dec. 18, 2005. (Divisions C and D would have provided for ANWR development and revenue disposition). Cloture motion on filibuster on ANWR provision failed Dec. 22, 2005 (yeas 56, nays 44, Roll Call #364). Signed by the President, Dec. 30, 2005.

**P.L. 109-171 (S. 1932)**

Omnibus budget reconciliation; Title IV would have provided for ANWR development. Introduced, referred to Committee on Budget, and reported October 27, 2005 (no written report). Passed Senate November 3, 2005 (yeas 52, nays 47, Roll Call #303). Passed House, amended, November 18, 2005 (ANWR provision removed prior to floor consideration). For House action, see also H.R. 4241. Conference report (H.Rept. 109-362) filed Dec. 19, 2005. House approved conference report (yeas 212, nays 206, Roll Call #670). Senate approved report with an amendment (yeas 51, nays 50, Roll Call #363), Dec. 21, 2005. House agreed to Senate amendment to House amendment (yeas 216, nays 214, Roll Call #4), Feb. 1, 2006. Signed by the President, February 8, 2006.

**H.Con.Res. 95 (Nussle)**

FY2006 budget resolution, included spending targets for Committee on Resources. Introduced March 11, 2005; referred to Committee on Budget. Reported March 11, 2005 (H.Rept. 109-17). Passed House March 17, 2005 (yeas 218, nays 214, Roll Call #88). Passed (amended) in Senate in lieu of S.Con.Res. 18 (no report). April 28, 2005, conference report filed (H.Rept. 109-62), House approved conference report (yeas 214, nays 211, Roll Call #149), and Senate approved conference report (yeas 52, nays 47, Roll Call #114).

**H.R. 6 (Barton)**

An omnibus energy act; Title XXII opens ANWR coastal plain to energy development. Introduced April 18, 2005; considered and marked up by Committee on Resources April 13, 2005 (no report). Considered by House April 20-21, 2005. Markey/Johnson amendment (H.Amdt. 73) to strike ANWR title rejected (yeas 200, nays 231, Roll Call #122) April 20. Passed April 21, 2005 (yeas 249, nays 183, Roll Call #132). Passed Senate, with no ANWR development provision, June 28, 2005 (yeas 85, nays 12, Roll Call #158). Conference agreement omits ANWR title; signed by the President August 8, 2005 (P.L. 109-58).

**HR. 39 (D. Young)**

Repeals current prohibition against ANWR leasing; directs Secretary to establish competitive oil and gas leasing program; specifies that the 1987 FLEIS is sufficient for compliance with the National Environmental Policy Act; authorizes set-

asides up to 45,000 acres of Special Areas that restrict surface occupancy; sets minimum for royalty payments and for tract sizes; and for other purposes. Introduced January 4, 2005; referred to Committee on Resources.

**H.R. 567 (Markey)**

Designates Arctic coastal plain of ANWR as wilderness. Introduced February 2, 2005; referred to Committee on Resources.

**H.R. 4241 (Nussle)**

FY2006 Reconciliation. Title to open ANWR struck before floor consideration. Introduced November 7, 2005; passed House November 18, 2005 (yeas 217, nays 215, Roll Call #601). Inserted in lieu of the text of S. 1932.

**S.Con.Res. 18 (Gregg)**

FY2006 budget resolution; includes spending targets for Committee on Energy and Natural Resources. Introduced January 31, 2005; referred to Committees on Budget, and Rules and Administration. Reported March 10, 2005 (no written report). Cantwell amendment (S.Amdt. 168, relating to ANWR) defeated March 16, 2005 (yeas 49, nays 51, Roll Call #52). Passed Senate March 17, 2005 (yeas 51, nays 49, Roll Call #81). Senate incorporated measure in H.Con.Res. 95 as an amendment; passed H.Con.Res. 95 in lieu.

**S.Con.Res. 74 (Cantwell)**

Corrected enrollment of the bill H.R. 2863 (P.L. 109-148) to delete Divisions C and D. Passed Senate Dec. 21, 2005 (yeas 48, nays 45, Roll Call #365). Passed House Dec. 22, 2005, on voice vote.

**S. 261 (Lieberman)**

Designates Arctic coastal plain of ANWR as wilderness. Introduced February 2, 2005; referred to Committee on Environment and Public Works.

**S. 1891 (Murkowski)**

Authorizes energy development and economically feasible oil transportation in ANWR. Introduced October 19, 2005; referred to Committee on Energy and Natural Resources.

## For Additional Reading

National Academies of Science. *Cumulative Environmental Effects of Oil and Gas Activities on Alaska's North Slope*. March 2003. 452 p.

Nelleman, C. and R. D. Cameron. *Cumulative Impacts of an Evolving Oil-field Complex on the Distribution of Calving Caribou*. Canadian Journal of Zoology. 1998. Vol. 76, p. 1425.

Revkin, Andrew C. *Hunting for Oil: New Precision, Less Pollution*. New York Times. January 30, 2001. p. D1-D2.

- U.S. Department of the Interior. Bureau of Land Management. *Overview of the 1991 Arctic National Wildlife Refuge Recoverable Petroleum Resource Update*. Washington, DC, April 8, 1991. 8 p., 2 maps.
- U.S. Department of the Interior. Fish and Wildlife Service, Geological Survey, and Bureau of Land Management. *Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment*. Report and Recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement. Washington, DC, 1987. 208 p.
- U.S. Department of the Interior. Geological Survey. *The Oil and Gas Resource Potential of the Arctic National Wildlife Refuge 1002 Area, Alaska*. 1999. 2 CD set. USGS Open File Report 98-34.
- U.S. Department of the Interior. U.S. Geological Survey. *Arctic Refuge Coastal Plain Terrestrial Wildlife Research Summaries*. Biological Science Report USGS/BRD/BSR-2002-0001.
- U.S. Department of the Interior. U.S. Geological Survey. "Evaluation of additional potential development scenarios for the 1002 Area of the Arctic National Wildlife Refuge." Memorandum from Brad Griffith, Assistant Leader, Alaska Cooperative Fish and Wildlife Research Unit, to Charles D. Groat, Director, U.S. Geological Survey. April 4, 2002 .
- U.S. General Accounting Office.<sup>10</sup> *Arctic National Wildlife Refuge: An Assessment of Interior's Estimate of an Economically Viable Oil Field*. Washington, DC, July 1993. 31 p. GAO/RCED-93-130.
- CRS Issue Brief IB10136. *Arctic National Wildlife Refuge (ANWR): Controversies for the 109<sup>th</sup> Congress*. M. Lynne Corn, Bernard A. Gelb, Pamela Baldwin.
- CRS Report RL31022. *Arctic Petroleum Technology Development*. Bernard A. Gelb, M. Lynne Corn, Terry R. Twyman.
- CRS Report RS21030. *ANWR Development: Economic Impacts*. Bernard A. Gelb.
- CRS Report RL31115. *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge*. Pamela Baldwin.
- CRS Report RL30862. *The Budget Reconciliation Process: The Senate's "Byrd Rule."* Robert Keith.
- CRS Report RL32108. *North Slope Infrastructure and the ANWR Debate*. M. Lynne Corn.
- CRS Report RS20368. *Overview of the Congressional Budget Process*. Bill Heniff, Jr.

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<sup>10</sup> This agency is now called the Government Accountability Office.



CRS Report 98-814. *Budget Reconciliation Legislation: Development and Consideration*. Bill Heniff, Jr.

CRS Report RL31278. *Arctic National Wildlife Refuge: Background and Issues*. M. Lynne Corn (Coordinator).

CRS Report RL31447. *Wilderness: Overview and Statistics*. Ross W. Gorte.

CRS Report RL31033. *Energy Efficiency and Renewable Energy Fuel Equivalents to Potential Oil Production from the Arctic National Wildlife Refuge (ANWR)*. Fred Sissine.

## Archived CRS Products

For those interested in more historical detail, the following archived CRS products are available upon request. They were current as of the date given below. (For more information on these products, call Anne Gillis at 7-8984.)

IB10116. *Energy Policy: the Continuing Debate and Omnibus Energy Legislation*. Robert L. Bamberger. December 23, 2004. 16 p.

IB10111. *Arctic National Wildlife Refuge: Controversies for the 108<sup>th</sup> Congress*. M. Lynne Corn, Bernard A. Gelb, Pamela Baldwin. November 1, 2004. 16 p.

IB10094. *Arctic National Wildlife Refuge: Legislative Issues*. M. Lynne Corn, Bernard A. Gelb, Pamela Baldwin. October 22, 2002. 15 p.

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